

State of California

Department of Education

## LAST MINUTE MEMORANDUM

**DATE:** September 8, 2004

**TO:** MEMBERS, STATE BOARD OF EDUCATION

**FROM:** William J. Ellerbee, Jr., Deputy Superintendent  
School and District Operations Branch

**RE:** Item No. 27

**SUBJECT:** School Bus and School Pupil Activity Bus Lap/Shoulder Belt Regulation:  
Adopt Proposed Title 5 Regulation

A public hearing was held on September 7, 2004, as required by the Administrative Procedure Act. No verbal comments were received. Two written comments were received from the public during the 45-day public comment period concerning proposed regulation Title 5, *California Code of Regulations*, Section 14105. The Final Statement of Reasons containing written responses to the public comments received is attached.

Attachment 1: Final Statement of Reasons (4 pages)

Attachment 2: Proposed Title 5 CCR, Section 14105 (2 pages)

## FINAL STATEMENT OF REASONS

### UPDATE OF INITIAL STATEMENT OF REASONS

**Education Code sections 38047.5 - 38047.6.** The purpose of the regulation is to satisfy the administrative requirements requiring a passenger in a school bus or school pupil activity bus equipped with passenger restraint systems in accordance with Section 27316 or 27316.5 of the *Vehicle Code* to use a passenger restraint system so that the passenger is properly restrained by that system.

### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JULY 23, 2004 THROUGH SEPTEMBER 7, 2004.

The text was made available to the public from July 23, 2004 through September 7, 2004. The Superintendent received two written comments, one from the Corona-Norco Unified School District on August 30, 2004 and one from the Children's Advocacy Institute on September 7, 2004.

**Comment:** Charles Bednar, Transportation Services Manager for the Corona-Norco Unified School District submitted comments regarding the necessity of the regulation: "It is difficult to accept that this rule is absolutely necessary, given California's existing seat belt laws."

**Response:** California's existing seat belt laws (*Vehicle Code* sections 27302-27317) are not applicable to school buses or any vehicle designated as a bus. In 1999, Assembly Bill 15 (AB 15) amended *Vehicle Code* Section 27316 requiring the addition of lap/shoulder belts in Type II school buses manufactured on and after July 1, 2004, and on Type I school buses manufactured on or after July 1, 2005.

AB 15 added *Education Code* sections 38047.5 and 38047.6, which requires the Department of Education to create a regulation requiring a passenger in a school bus or school pupil activity bus equipped with passenger restraint systems to use the passenger restraint system properly.

In addition, AB 15 amended *Education Code* section 39831.5 to require county superintendents of schools, superintendents of school districts, or owner/operators of private schools to ensure instruction is provided to all pupils in pre-kindergarten, kindergarten, and grades 1 to 12, inclusive, who are transported in a school bus or school pupil activity bus, on the use of passenger restraint systems, when a passenger restraint system is installed.

This instruction shall include, but not be limited to, the proper fastening and release of the passenger restraint system, the acceptable placement of passenger restraint systems on the pupil, the times at which the passenger restraint systems should be

fastened and released, and the acceptable placement of the passenger restraint systems when not in use.

These statutory obligations make it mandatory that the department act in the interest of public safety and promulgate this regulation. No change to the proposed regulation.

**Comment:** Charles Bednar, Transportation Services Manager for the Corona-Norco Unified School District, submitted comments regarding the definition of the words “*shall be instructed.*”

**Response:** The requirement for training pupils on the use of lap/shoulder belts is contained in *Education Code* section 39831.5(a) which requires the following:

All pupils in pre-kindergarten, kindergarten, and grades 1 to 12, inclusive, in public or private school who are transported in a schoolbus or school pupil activity bus shall receive instruction in schoolbus emergency procedures and passenger safety. The county superintendent of schools, superintendent of the school district, or owner/operator of a private school, as applicable, shall ensure that the instruction is provided as follows:

- (1) Upon registration, the parents or guardians of all pupils not previously transported in a schoolbus or a school pupil activity bus and who are in prekindergarten, kindergarten, and grades 1 to 6, inclusive, shall be provided with the written information on schoolbus safety. The information shall include, but not be limited to, all of the following:
  - (A) A list of school bus stops each pupil's home.
  - (B) General rules of conduct at schoolbus loading zones.
  - (C) Red light crossing instructions.
  - (D) Schoolbus danger zone.
  - (E) Walking to and from schoolbus stops.
- (2) At least once in each school year, all pupils in prekindergarten, kindergarten and grades 1 to 8, inclusive, who receive home-to-school transportation shall receive safety instruction that includes, but is not limited to, proper loading and unloading procedures, including escorting by the driver, how to safely cross the street, highway, or private road, instruction on the use of passenger restraint system, as described in paragraph (3), proper passenger conduct, bus evacuation, and location of emergency equipment. Instruction also may include responsibility of passengers seated next to an emergency exit. As part of the instruction, pupils should evacuate the schoolbus through emergency exit doors. Instruction on the use of passenger restraint systems, when a passenger restraint system is installed, shall include, but not be limited to, all of the following:
  - (A) Proper fastening and release of the passenger restraint system.
  - (B) Acceptable placement of passenger restraint systems on pupils.
  - (C) Times at which the passenger restraint systems should be fastened and released.

(D) Acceptable placement of the passenger restraint systems when not in use.

This section clearly defines who is responsible for the instruction and the general areas of instruction to be provided. The proposed regulation provides specific best practices and nationally accepted standards for the proper use of lap/shoulder belts, in addition to appropriate exemptions. No change to the proposed regulation.

**Comment:** Charles Bednar, Transportation Services Manager for the Corona-Norco Unified School District, submitted a comment regarding the definition of the words “is *in motion*.”

**Response:** This phrase is commonly used in the California school bus industry in regards to school bus collisions. *Vehicle Code* section 12517.1(a) (3) states that an “Injury of a pupil inside a vehicle described in paragraph (1) as a result of acceleration, deceleration, or other movement of the vehicle” is a “school bus accident.” The example commonly used to explain this subdivision uses the phrase “in motion” in order to simplify the legal text, as in “the school bus was in motion or moving.”

The word “motion” is defined in Webster’s Collegiate Dictionary as “an act, process, or instance of changing place: movement”. The Department believes the use of the phrase “is in motion” is both appropriate and has sufficient clarity as to impart to the reader the intent of the requirement. No change to the proposed regulation.

**Comment:** Charles Bednar, Transportation Services Manager for the Corona-Norco Unified School District, submitted comments regarding the definition of the words “*stored in a safe manner*.”

**Response:** This phrase is taken out of context; the entire sentence is, “When not in use, passenger restraint systems shall be fully retracted into the retractors so that no loose webbing is visible, or stored in a safe manner per the school bus manufacturer’s instructions.” The Department has the obligation to prepare regulations that will accommodate all current seating configurations, restraint system designs, and vehicle construction standards. The Department does not have the ability to thoroughly test all such products, and therefore decided the best course of regulatory action was to rely on the manufacturer’s research and testing of their individual products, and have school bus carriers follow the manufacturer’s guidelines, procedures and standards. No change to the proposed regulation.

**Comment:** Debra Back, Staff Attorney for the Children’s Advocacy Institute submitted comments regarding the clarity of proposed subsection 14105(e). Ms. Back proposes that the subsection include time periods for the physician or chiropractic certification for exemption, who would approve or certify the certification and determine its authenticity or if a forgery of the certification was suspected and can the physician or chiropractor be contacted for authenticity.

**Response:** Because subsection (e) of section 14105 is an exemption, the seatbelt must be used by the student until the doctor's letter is received by the district and authenticated. It would be up to the district to determine the time frame in which the certification is to be received and approved. If fraud or forgery is suspected, the district should contact the doctor or chiropractor. Like any other exemption provided by law, the entity granting the exemption should have the responsibility and implied authority to develop the details of the program operation. No change to the proposed regulation.

**Comment:** Debra Back, Staff Attorney for the Children's Advocacy Institute, submitted comments stating that the terms "physically disabling condition" and "medical condition" are not defined.

**Response:** The terms "physically disabling condition" and "medical condition" should already be clearly defined in the school district's special education unit. No change to the proposed regulation.

**Comment:** Debra Back, Staff Attorney for the Children's Advocacy Institute, submitted comments regarding a child's right to privacy regarding their medical information might be compromised. Ms. Back proposes that language regarding who will be provided with such medical information be included in the regulation.

**Response:** School district's special education policies should already contain procedures necessary to insure a child's medical information privacy as required by law. No change to the proposed regulation.

### **ALTERNATIVES DETERMINATION**

The State Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

### **LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.

### **REGULATIONS TO BECOME EFFECTIVE UPON FILING**

It is important that this regulation becomes effective as soon as possible to prevent inadequate or improper training from being adopted and administered by school bus carriers.

TITLE 5. Education

Division 1. State Department of Education

Chapter 13. School Facilities and Equipment

Subchapter 2. Use of School Buses and School Pupil Activity Buses

Article 1. General Provisions

*Add Section 14105 to read:*

§ 14105. School Bus and School Pupil Activity Bus (SPAB) Passenger Restraint System Use.

**All passengers in a school bus or in a school pupil activity bus that are equipped with passenger restraint systems in accordance with sections 27316 and 27316.5 of the Vehicle Code, shall use the passenger restraint system. All pupils described in subdivision (a) of Education Code Section 39831.5, shall be instructed in an age-appropriate manner in the use of passenger restraint systems required by Education Code Section 39831.5 (a) (3). The instruction shall include, but not be limited to, the following information:**

**(a) Proper fastening and release of the passenger restraint system:**

**(1) Fastening: To fasten, insert the latch plate (the metal “tongue” attached to one side of the webbing) into the proper buckle (the receptacle that comes out from the “bight” in the back of the seat, a slot in the seat cushion, or from the side). The latch plate inserts into the buckle until you hear an audible snap sound and feel it latch. Make sure the latch plate is securely fastened in the buckle.**

**(2) Unfastening: To unfasten, push the buckle release button and remove the latch plate from the buckle. The buckle has a release mechanism that, when manually operated during “unbuckling”, breaks the bond and separates the two sections.**

**(b) Acceptable placement of passenger restraint systems on pupils: Adjust the lap belt to fit low and tight across the hips/pelvis, not the stomach area. Place the shoulder belt snug across the chest, away from the neck. Never place the shoulder belt behind the back or under the arm. Position the shoulder belt height adjuster so that the belt rests across the middle of the shoulder. Failure to adjust the shoulder belt properly would reduce the effectiveness of the lap/shoulder belt system and increase the risk of injury in a collision.**

1        (c) Times at which the passenger restraint systems should be fastened and  
2 released: Passenger restraint systems shall be used at all times the school bus or  
3 school pupil activity bus is in motion except when exempted in subdivisions (e) and (f) of  
4 this section.

5        (d) Acceptable placement of the passenger restraint systems when not in use: When  
6 not in use, passenger restraint systems shall be fully retracted into the retractors so that  
7 no loose webbing is visible, or stored in a safe manner per the school bus  
8 manufacturer's instructions.

9        (e) This section does not apply to a passenger with a physically disabling condition  
10 or medical condition which would prevent appropriate restraint in a passenger restraint  
11 system, providing that the condition is duly certified by a licensed physician or licensed  
12 chiropractor who shall state in writing the nature of the condition, as well as the reason  
13 the restraint is inappropriate.

14        (f) This section also does not apply in case of any emergency that may necessitate  
15 the loading of school children on a school bus in excess of the limits of its seating  
16 capacity. As used in this section, "emergency" means a natural disaster or hazard (as  
17 determined by the school district superintendent or their designee) that requires pupils  
18 to be moved immediately in order to ensure their safety.

19 NOTE: Authority cited: Sections 33031, 38047.5, 38047.6, and 39831, Education Code.  
20 Reference: Sections 38047.5, 38047.6, 39830, 39830.1, and 39831.5, Education Code;  
21 Sections 27316 and 27316.5, Vehicle Code.